

**Letter of Findings: 01-20140590
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Husband and Wife were required to file a married-jointly 2011 Indiana individual income tax return because they were Indiana residents.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayers protest the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals, who own more than one piece of property in Indiana, with a current Florida address. Publicly verifiable information showed that Taxpayers claimed the "homestead" deduction (or exemption) on their Indiana home pursuant to Indiana law for the 2011 paid 2012 year. Taxpayers did not file their Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that for the tax year 2011, Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana income tax return, and that Indiana income tax was due for the 2011 tax year.

Taxpayers timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department determined that Taxpayers were Indiana residents; that they were required to file their 2011 Indiana income tax return; and that Indiana income tax was due for the 2011 tax year. Taxpayers, to the contrary, claimed that they were not required to file their 2011 Indiana income tax return and they did not owe any Indiana income tax because they were not Indiana residents for the tax year at issue. The issue is whether, for the tax year 2011, Taxpayers were Indiana residents and therefore were subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or **complying with the homestead laws of a state**
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

Under Indiana law "[h]omestead" is defined as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefit of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. *Id.* at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. *Id.* The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.** Id. at 277-78.

(Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18 (Ind. 1988).

(Internal citations omitted) (**Emphasis added**).

During the protest process, Taxpayers stated that they purchased a condominium in Florida in 2004 and decided to relocate to Florida in 2008 after Husband retired from a company in Indiana. Similar to Mr. Walton and Mr. Bayh, Taxpayers maintained more than one residence in more than one state. Taxpayers asserted that for the tax year 2011 they were Florida residents, not Indiana residents. Specifically, Taxpayers asserted that in addition to holding Florida driver's licenses, they titled their vehicles, registered to vote, and obtained Concealed Weapon or Firearm Licenses in Florida. Additionally, Taxpayers stated that they claimed the "homestead exemption" on their condominium in Florida and did not claim the "homestead exemption" on their Indiana residence. Taxpayers stated that in late August 2011 they sold one piece of their property in Indiana at a loss. Taxpayers further stated

they put their Indiana home on the market and had an offer in 2011. However, the sale of their Indiana home fell through due to the fact that buyers could not secure a mortgage; Taxpayers' Indiana home was eventually sold to a different buyer the next year, 2012. Taxpayers further offered a copy of "Declaration of Domicile" which Husband declared that he "reside[d] in and maintain[ed] a place of abode" at the address of their condominium in Florida in September 2008.

Upon review, however, the Department is not able to agree that Taxpayers were not Indiana residents for the tax year at issue. There is no dispute that Taxpayers maintained Florida driver's licenses and titled their vehicles in Florida; that Taxpayers obtained Concealed Weapon or Firearm Licenses in Florida; that Husband recorded their Florida address in his Declaration of Domicile; and that Taxpayers tried to sell their Indiana home in 2011. The Department does not question that Taxpayers intended to become, and may qualify to be, Florida residents. But, as mentioned earlier, a person could have more than one residence and could be a resident of more than one state. A person however could only have one domicile. For Indiana income tax purposes, as mentioned earlier, a taxpayer is considered an Indiana resident and is required to file Indiana income tax return reporting his or her income when the taxpayer is domiciled in Indiana.

Taxpayers' supporting documentation at best demonstrated that they intended to change their domicile from Indiana to Florida. However, in order to change the domicile, it requires more. Specifically, Taxpayers did not file their state return reporting their income tax in Florida because Florida does not tax income earned by individuals. A review of publicly verifiable records showed that Taxpayers claimed the homestead exemption/deduction on their Indiana home for the 2011 paid 2012 year. Taxpayers, offering the first page of "Taxpayer and Property Information" notice concerning their Indiana home from an Indiana County Treasurer, contended that they did not claim the Indiana homestead exemption on their Indiana home for the 2011 year. Taxpayers' reliance on that notice however is misplaced. The only page offered by Taxpayers was dated April 22, 2011, and did not contain the complete information. The Department and Indiana homeowners must be mindful that the assessment of property tax under Indiana law, different from Florida law, is for one year behind. Thus, that notice was for the homeowners' information only and that alone did not apply to the tax year at issue. Rather, Indiana homeowners are required to notify the auditor of the county in Indiana that they were no longer eligible for the Indiana "homestead" deduction (or exemption) pursuant to IC § 6-1.1-12-37(f). Taxpayers here failed to do so.

Moreover, publicly verifiable records showed that, in early 2011, Husband renewed his professional license of Certified Public Account, listing their Indiana home address as his mailing address; so did Wife when she renewed her professional license of Cosmetologist in Indiana. Under Indiana law, valid professional licenses are required when persons offer their expertise for compensation, namely earning income. Taxpayers, by renewing their professional licenses in Indiana in early 2011 (listing their Indiana home address), demonstrated that they continued staying and intended to maintain their practice in Indiana. Similarly, Husband continued listing their Indiana home address when he renewed the registration of his watercraft in 2011. Taxpayers' documents further showed that they sold one piece of property in August 2011 and their Indiana home was not sold until 2012. Thus, **given the totality of the circumstances**, in the absence of other supporting documentation, the Department is not able to agree that Taxpayers effectively abandon Indiana as their state of domicile.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317. Additionally, "[a] person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence." Id. Thus, the Department is not able to agree that Taxpayers effectively and legally changed their domicile. In the absence of other verifiable supporting documentation, the Department is not able to agree that Taxpayers met their burden of proof.

FINDING

Taxpayers' protest is respectfully denied.

Posted: 12/30/2015 by Legislative Services Agency
An [html](#) version of this document.